Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

TCI MEDIA SERVICES, GREAT NORTHWEST REGION, an entity of unknown type; TCI MEDIA SERVICES, BOISE, an entity of unknown type; UNITED CABLE TELEVISION CORP., a Delaware corporation; TCI COMMUNICATIONS, INC., a Delaware corporation; TELE-COMMUNICATIONS, INC., a Delaware corporation; BRUCE WETTEN, an individual; and EDWARD MOORE, an individual,

Petitioners,

v.

PATRICIA A. COLE, CATHY LEAL, and BECKI TRUEBLOOD,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

With respect to Title VII of the Civil Rights Act of 1964:

1. Did the Ninth Circuit correctly hold that plaintiffs who worked in a deferral state (Idaho), and who knowingly instructed the Equal Employment Opportunity Commission to submit their sex discrimination charges in another state to a local agency which lacked authority to grant or seek the relief sought (City of Seattle Office of Civil Rights), had "filed" their charges with the EEOC within the meaning of 42 U.S.C. § 2000e-5(c)?

With respect to parallel provisions of the Age Discrimination in Employment Act:

2. Did the Ninth Circuit correctly hold that a plaintiff who worked in a deferral state, and who knowingly instructed the Equal Employment Opportunity Commission to submit her age discrimination charges in another state to a local agency which lacked authority to grant or seek the relief sought, had exhausted her administrative remedies under 29 U.S.C. § 633(b)?

PARTIES TO THE PROCEEDING

The caption contains the names of all parties to this proceeding, although some of the captioned defendants are unknown entities that have been incorrectly named to the best of Petitioners' knowledge. *See* Corporate Disclosure Statement, *infra*.

CORPORATE DISCLOSURE STATEMENT

"TCI Media Services, Great Northwest Region" and "TCI Media Services, Boise" have been incorrectly named. There are no actual corporate entities with those names.

United Cable Television Corporation, formerly d/b/a TCI Media Services, is a Delaware corporation, and a wholly-owned subsidiary of United Artists Holdings, Inc.

United Artists Holdings, Inc. is a wholly-owned subsidiary of AT&T Broadband LLC, formerly known as Tele-Communications, Inc.[1] AT&T Broadband LLC is a 100 percent subsidiary of AT&T Corp., a publicly traded company.[2] TCI Communications, Inc., was merged into Tele-Communications, Inc. as part of Tele-Communications, Inc.'s acquisition by AT&T Corp.

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[1] AT&T Broadband LLC also owns 100 percent of the Series A Cumulative Preferred Stock of United Artist Holdings, Inc. The Series B Cumulative Preferred Stock of United Artist Holdings, Inc. is held as follows: United Cable Television Corp.—44 percent, TCI Realty, LLC—8.7 percent, UACC Midwest, Inc.—20.8 percent and TCI of Northern New Jersey, Inc.—26.5 percent. Each of the entities holding the Series B Stock is wholly owned, directly or indirectly, by United Artist Holdings, Inc.

[2] AT&T Corp. is a corporation the stock of which is traded on the New York Stock Exchange. It has more than 1,000 shareholders.

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Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners herein respectfully petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit, which reversed the entry of summary judgment in Petitioners' favor by the United States District Court for the District of Idaho.

OPINIONS BELOW

The unreported April 8, 2002 Memorandum decision of the Ninth Circuit (CA No. 00-35508) is reproduced as Appendix A. The Order of the Ninth Circuit, entered June 5, 2002, denying Petitioners' petition for panel rehearing is

reproduced as Appendix B. The Mandate of the Ninth Circuit, issued June 13, 2002, is reproduced as Appendix C. The Amended Order and Amended Judgment of the district court, entered May 18, 2000, granting Petitioners' summary judgment motion and dismissing the case is reproduced as Appendix D. The Order of the district court, entered July 19, 2000, denying plaintiffs' motion for reconsideration on summary judgment is reproduced as Appendix E.

STATEMENT OF JURISDICTION

The Ninth Circuit issued a Memorandum decision and entered a Judgment on April 8, 2002, reversing the district court's entry of summary judgment in Petitioners' favor. (App. A.) On April 29, 2002, Petitioners petitioned the Ninth Circuit for a panel rehearing, and on June 5, 2002 the Ninth Circuit issued an Order denying that petition. (App. B.) This Petition is being timely filed within 90 days of that Order. 28 U.S.C.A. § 2101(c) (West 1994); *see* Sup. Ct. Rule 13.3 (petition for writ of certiorari is timely if filed within 90 days of an order by federal circuit court denying petition for rehearing); *Missouri v. Jenkins*, 495 U.S. 33 (1990) (a petition for rehearing suspends finality of circuit court's judgment until it is denied). This Court has jurisdiction in this matter pursuant to 28 U.S.C.A. § 1254(1) (West 1993).

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation of federal anti-discrimination statutes governing the exhaustion of administrative remedies and the statute of limitations under Title VII of the Civil Rights Act of 1964 ("Title VII"), 78 Stat. 241, 253, as amended, 42 U.S.C.A. § 2000e *et seq.* (West 1994), and the Age Discrimination in Employment Act of 1967 (the "ADEA"), 81 Stat. 602, as amended, 29 U.S.C.A. § 621 *et seq.* (West 1999).

42 U.S.C.A. § 2000e-5(c)

Section 706(c) of Title VII, 42 U.S.C.A. § 2000e-5(c) (West 1994), provides:

> In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or *authorizing a State or local authority to grant or seek relief from such practice* or to institute criminal proceedings with respect thereto upon receiving notice thereof, *no charge may be filed under subsection [(b)][1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated*, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(Emphasis and footnote added.)

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[1] The 1972 amended version of this statute erroneously retained the subsection "(a)" reference in the original 1964 Act. As this Court has observed, however, subsection "(b)" is clearly correct. *See EEOC v. Commercial Office Prods. Co.*, 486 U.S. 107, 111 n.2 (1988).

29 U.S.C.A. § 633(b)

Section 14(b) of the ADEA, 29 U.S.C.A. § 633(b) (West 1999), provides:

> In the case of an alleged unlawful practice occurring in a *State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law*, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

(Emphasis added.)

STATEMENT OF THE CASE

A. Facts Material to the Questions Presented.

1. *Plaintiffs Were Employed in Idaho, Resigned There, and Filed EEOC Charges.*

Respondents Cathy Leal, Becki Trueblood and Patricia Cole (collectively, "plaintiffs") were employed as "account executives" at defendant United Cable Television Corpo ration, formerly dba TCI Media Services ("TCI"), where they sold television advertising spots on TCI Cable to local businesses. (App. D; 8a.) Plaintiffs were hired and served the entire duration of their employment in Boise, Idaho. (*Id.*;

Plaintiffs' Statement of Disputed Facts and Additional Material Facts in Opposition to Defendants' Motion for Summary Judgment ¶ 1, excerpts of which are reproduced as Appendix F; 24a.)

Leal was hired on August 3, 1993 and resigned on October 1, 1997. Trueblood was hired on July 12, 1994 and resigned on June 3, 1997. Cole was hired on July 8, 1996 and resigned on April 4, 1997. (*See* plaintiffs' EEOC charges forms, reproduced as Appendices G-I; *see also* App. D; 8a.)

After they resigned, plaintiffs each submitted charges to the Equal Employment Opportunity Commission (the "EEOC") in the fall of 1997, alleging that their Boise co-worker, defendant Edward Moore, had subjected them to unwelcome sexual harassment in violation of Title VII, and that the TCI's general manager in Boise, defendant Bruce Wetten, had discriminated against them with regard to promotions, pay, and benefits because of their gender in violation of Title VII and the Equal Pay Act, 29 U.S.C.A. § 206(d) (West 1998) (the "EPA").[2] (App. A; 2a; Apps. G–I.) Plaintiff Cole subsequently submitted additional charges to the EEOC in December 1997, alleging that defendants had also discriminated against her on the basis of age in violation of the ADEA. (App. A; 3a; App. I.) The EEOC issued plaintiffs right-to-sue letters on February 10, 1998, reproduced as Appendices J-L.

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[2] References hereinafter to "defendants," collectively, are to all individual and real-entity defendants represented in the action below.

2. *Plaintiffs Instructed the EEOC to Forward Their Charges to a Local Agency with No Subject Matter Jurisdiction.*

a. Plaintiffs Were Aware That the Discriminatory Conduct They Alleged Arose Solely in Idaho.

In the trial court, plaintiffs admitted without reservation that they were hired and employed exclusively in Idaho, and that all of the alleged discriminatory conduct of which they complained took place in Idaho. Paragraph 1 of Defendants' Statement of Material Facts, filed January 28, 2000 (*see* App. F; 24a ¶ 1), states:

> All Plaintiffs have conceded that their entire employment with TCI Media Services took place in Idaho, that they were hired and employed for the entire duration of their employment in the Boise, Idaho office, that they were never employed in Washington or any other state. (Ex. 26 at Responses 2-4) Consequently, all of the alleged claims in the Complaint and in Plaintiffs' EEOC charges were based entirely on acts that took place in Idaho if they occurred anywhere.

Plaintiffs responded in one sentence:

> "1. Plaintiffs do not dispute this fact."

(*Id.*)

b. Plaintiffs, Through Their Attorneys, Took Affirmative Steps to Cause the EEOC to Forward Their Charges to the Seattle Office for Civil Rights.

Plaintiffs were represented by counsel and submitted their EEOC charges through their attorneys.[3] Leal and Trueblood

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[3] *See* correspondence between plaintiffs' counsel and the EEOC's Seattle branch office, reproduced as Appendices M–O.

submitted their Title VII charges to the EEOC office in Seattle. (Apps. G, H.) Cole also submitted her ADEA charges to the EEOC in Seattle.[4] (App. I.) In completing their respective EEOC charges forms, each plaintiff listed her primary employer as "TCI Media Services, 18 West Mercer, Suite 100 Seattle, WA 98119." (Apps. G–I.) In the entry space provided for "State or local Agency, if any," each plaintiff specifically instructed the EEOC to forward her charges to the "Seattle Office for Civil Rights" (the "Seattle OCR").[5] (*Id.*) Plaintiffs did not inform the EEOC that the discriminatory conduct of which they complained in their charges took place entirely in Idaho,[6] nor did they ask the EEOC to forward their charges to the Idaho Human Rights

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[4] Through her former counsel, Cole filed Title VII charges in the fall of 1997 with the EEOC in Seattle, and requested that they be forwarded to the Idaho Human Rights Commission. Through her current counsel, she subsequently amended her charges to include age discrimination and expressly requested that her amended charges be deferred by the EEOC to the Seattle Office for Civil Rights rather than the IHRC. (*See* Apps. M, N.) The exhaustion of administrative remedies and the timeliness of Cole's Title VII charges are not at issue in this Petition. However, Cole's request that the EEOC forward her ADEA charges to the local agency in Seattle, knowing that the IHRC was the appropriate state or local agency through which to exhaust her administrative remedies, is a material fact for purposes of the questions presented.

[5] In the Ninth Circuit, plaintiffs argued that they were entitled to the 300-day statute of limitations in 42 U.S.C.A. § 2000e-5(e)(1) because Washington is a deferral state and the EEOC has a self-executing worksharing agreement with the Washington State Human Rights Commission ("WSHRC"). (*See* Appellants' Opening Brief at 20 n.4.) Plaintiffs did not direct the EEOC to forward their charges to the WSHRC, but even if they had, it would not have meant they exhausted their administrative remedies. Like the Seattle OCR, the WSHRC lacked subject matter jurisdiction, since none of the alleged discrimination took place in Washington. (*See* App. F; 24a. ¶ 1.)

[6] In their EEOC charges forms, plaintiffs described the alleged discriminatory acts, but did not specify where they occurred. (*See* Apps. G–I.)

Commission ("IHRC"). The Seattle OCR did not have jurisdiction to investigate plaintiffs' claims, because it had no "authority to grant or seek relief from" the discrimination alleged by plaintiffs in their charges.[7] 42 U.S.C.A. § 2000e-5(c); 29 U.S.C.A. § 633(b); *see also* generic form of EEOC's Seattle District Office, listing all state and local agencies within that district and providing "Jurisdictional Information for Charging Parties", reproduced as Appendix P; 44a.

B. Course of Proceedings Below.

On May 6, 1998 plaintiffs filed a Complaint in the United States District Court for the Western District of Washington. Defendants moved to dismiss or transfer the case to the district court in Idaho on grounds that plaintiffs' employment and all alleged discriminatory conduct set forth in the Complaint took place in Idaho, if anywhere. Plaintiffs did not contest the motion, but stipulated to the transfer of venue and filed an Amended Complaint in the Idaho district court on November 2, 1998, alleging discrimination claims under Title VII, the ADEA (Cole only), and the EPA. (Apps. A; 2a-3a.) The district court assumed jurisdiction of plaintiffs' federal claims pursuant to 28 U.S.C.A. § 1331 (West 1993). Plaintiffs also alleged several state law claims relating to the same underlying circumstances as their federal claims. (App. D; 15a.)

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[7] The Seattle Municipal Code ("SMC") 14.04 "Fair Employment Practices Ordinances" sets forth the duties, and defines the jurisdiction, of the Seattle OCR. In particular, *see* SMC § 14.04.020, "Declaration of policy" ("The role of the Office for Civil Rights is to enforce the provisions of this chapter in furtherance of this policy."); SMC § 14.04.040, "Unfair employment practices designated" ("It is unfair employment practice *within the City* for any: . . . Employer to discriminate against any person with respect to . . . .") (emphasis added); and SMC § 14.04.060, "Powers and duties of Department" (". . . The Office for Civil Rights shall receive, investigate, and pass upon charges alleging unfair practices *as defined by this chapter* . . . .") (emphasis added).

On January 28, 2000 defendants filed a motion for summary judgment, seeking dismissal of the case on a number of grounds, including failure to exhaust administrative remedies and failure to file timely charges with the EEOC. (*See, e.g.*, Memorandum in Support of Defendants' Motion for Summary Judgment (Docket No. 45), filed January 28, 2000, at 2-4.) On May 18, 2000 the district court entered an Amended Order and Amended Judgment, granting defendants' motion and dismissing the case in its entirety. (App. D.) With respect to the Title VII and ADEA claims, the Court ruled both that plaintiffs had never exhausted their administrative remedies and that they had failed to file timely EEOC charges under the applicable statutes of limitation.[8] (*Id.* at 9a-13a.)

On May 26, 2000 plaintiffs filed a motion for reconsideration or, in the alternative, for a new trial. (App. E.) The district court entered an Order on July 19, 2000 denying that motion. (*Id.*)

Plaintiffs appealed the district court's summary judgment ruling to the Ninth Circuit, which reversed and remanded for further proceedings. (App. A.) The Ninth Circuit applied the 300-day statutes of limitation for the filing of Title VII and ADEA charges,[9] on grounds plaintiffs had "filed with the EEOC in a deferral state [Washington] that has a fair employment practices (FEP) agency." (App. A; 2a.) Finding that plaintiffs had filed their charges with the EEOC within 300 days of the alleged discriminatory acts, the Ninth Circuit held that plaintiffs' charges were timely.[10] (*Id.*)

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[8] The district court also dismissed plaintiffs' EPA claims, a ruling upheld by the Ninth Circuit which is not at issue in this Petition.

[9] *See* 42 U.S.C.A. § 2000e-5(e)(1) (West 1994) and 29 U.S.C.A § 626(d) (West 1999).

[10] The Ninth Circuit also evaluated the record to determine whether there was an issue of fact as to whether Leal stated a claim for

Petitioners' petition for panel rehearing was denied on June 5, 2002. (App. B.)

REASONS FOR GRANTING THE PETITION

Under Supreme Court Rule 10(c), grounds for a writ of certiorari exist when a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court or has decided a federal question in a way that conflicts with applicable decisions of this Court. Review is also appropriate under Rule 10(a) when a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter.

As explained below, all of the above-stated grounds for review are present here.

I. THIS CASE INVOLVES AN IMPORTANT ISSUE OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, RESOLVED BY THIS COURT.

The questions presented in this Petition raise an important issue concerning the exhaustion of administrative remedies under federal antidiscrimination statutes. Generally stated, the issue is whether an employee who works in a deferral state may "forum shop" in exhausting administrative remedies.

The plaintiffs here worked in a deferral state with an agency fully capable of investigating the charges they alleged (*i.e.*, the IHRC).[11] Believing for whatever reason that they

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constructive discharge, because she resigned several months after defendant Moore had resigned. (App. A; 3a-4a.) That aspect of the Ninth Circuit's decision is at issue in this Petition because Petitioners contend that Leal has not exhausted her administrative remedies.

[11] Cole's Title VII charges were filed with the IHRC, which forwarded them to the EEOC. (App. A; 3a.) The Ninth Circuit expressly found the

might fare better in another forum, however, plaintiffs knowingly directed the EEOC to forward their charges to the Seattle OCR—an agency located in another state that had no connection to any of the discriminatory conduct they alleged.

As noted below, this Court has held that the exhaustion of administrative remedies is a mandatory requirement in Title VII and ADEA cases. It is required by the plain statutory text and is consistent with Congressional intent that state and local agencies be afforded a reasonable opportunity to investigate and attempt to resolve disputes within their jurisdictions before the federal government becomes involved. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 755-56 (1979); *Mohasco Corp. v. Silver*, 447 U.S. 807, 820-21 (1980).

However, this Court has liberally construed the *process* by which an employee may clear that statutory hurdle. *See, e.g., EEOC v. Commercial Office Prods. Co.*, 486 U.S. 107, 121-22 (1988) (administrative remedies are satisfied through state agency's waiver of exclusive 60-day period for initial processing of claim).

Nevertheless, as the Court's recent decision in *National Railroad Passenger Corp. v. Morgan*, 122 S. Ct. 2061 (2002), demonstrates, the liberal leeway that an employee may be afforded in this regard cannot be stretched to the point where such procedural prerequisites as exhaustion of remedies and compliance with statutes of limitation are simply no longer meaningfully enforced.

The Ninth Circuit's decision in this case does just that. It permits a charging party who works in a deferral state to exhaust administrative remedies and obtain the benefit of the 300-day statute of limitations by submitting charges to the EEOC with a request that they be forwarded to *any* state or

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IHRC to be a state agency with subject matter jurisdiction over plaintiffs' Title VII claims. (*See id.*; 3a-4a.)

local forum of the plaintiff's choice, regardless of whether that agency has subject matter jurisdiction with "authority to grant or seek relief" from the alleged discrimination. 42 U.S.C.A. § 2000e-5(c); 29 U.S.C.A. § 633(b). Under the Ninth Circuit's holding, plaintiffs here would have exhausted their administrative remedies by submitting their charges to the EEOC with directions that it defer, for example, to the Virginia Council on Human Rights—a senseless result that would deprive the State of Idaho of its right to assume primary jurisdiction of the dispute.

Plaintiffs failed to exhaust their administrative remedies because the EEOC never had jurisdiction to "file" their charges, since no state or local agency with jurisdiction satisfied the deferral requirement in 42 U.S.C.A. § 2000e-5(c) or 29 U.S.C.A. § 633(b).

This Petition presents an opportunity to resolve an important issue of federal law that this Court has yet to decide precisely, and as to which the federal circuit courts are divided. The Ninth Circuit's overly permissive interpretation of the means by which the plaintiffs in this case were allowed to exhaust their administrative remedies led it to infer exhaustion where none existed. The Court should grant review and hold that employees exhausting administrative remedies may not forum shop by deferring their charges to a state or local agency that has no subject matter jurisdiction over the alleged discrimination. Such a rule is fundamentally unfair to employers, inconsistent with the statutory text and the purpose of exhaustion, and contrary to relevant precedent of this Court and various United States courts of appeals.[12]

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[12] Because they failed to exhaust their administrative remedies, plaintiffs' claims are stale at this point under 42 U.S.C.A. § 2000e-5(e)(1) and 29 U.S.C.A § 626(d). However, this Court has held that the failure to exhaust administrative remedies is a non-jurisdictional defect, and that equitable doctrines such as waiver, estoppel and tolling may apply under extraordinary circumstances. *See Zipes v. Trans World Airlines, Inc.*, 455

A. Exhaustion of Administrative Remedies Is Mandatory, Not Optional.

This Court requires strict compliance with the statutory provisions governing exhaustion of administrative remedies under Title VII and the ADEA.

Section 706(c) of Title VII provides in relevant part that in a deferral state[13]

> no charge may be *filed* under subsection [(b)] of this section by the person aggrieved before the expiration of sixty days after proceedings have been *commenced under the State or local law*, unless such proceedings have been earlier terminated . . . .

(Emphasis added.) *Cf.* Section 14(b) of the ADEA, 29 U.S.C.A. § 633(b).[14]

U.S. 385, 393 (1982). Because no facts would justify plaintiffs' knowing decision to misdirect the EEOC to forward their charges to an agency lacking subject matter jurisdiction, if this Court were to grant review and reverse, Petitioners would contend on remand that plaintiffs' claims should be dismissed with prejudice. *Cf. Burnett v. N. Y Cent. R.R.. Co.*, 380 U.S. 424, 429 (1965) (tolling allowed where plaintiff innocently filed FELA action in wrong venue, but in court "of competent jurisdiction").

[13] A deferral state is defined as:

> [A] State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof . . .

42 U.S.C.A. § 2000e-5(c) (West 1994). *Cf.* 29 U.S.C.A. § 633(b) (West 1999).

[14] In *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979), this Court observed:

> Since the ADEA and Title VII share a common purpose, the elimination of discrimination in the workplace, since the language of § 14(b) is almost *in haec verba* with § 706(c), and since the legislative history of § 14(b) indicates that its source was § 706(c),

"Under Title VII . . . state fair employment practices agencies have *primary jurisdiction* over employment discrimination complaints." *Del. State Coll. v. Ricks*, 449 U.S. 250, 254 (1980) (emphasis added) (citing 42 U.S.C. § 2000e-5(c)). (*See also* App. P; 44a.) Congress included the exhaustion requirement "to screen from the federal courts those problems of civil rights that could be settled . . . in 'a voluntary and localized manner.'" *Mohasco*, 441 U.S. at 755 (quoting 110 Cong. Rec. 12725 (1964) (remarks of Sen. Humphrey)). A deferral state with an agency capable of granting or seeking relief from the discrimination alleged has the right to assume jurisdiction and investigate in the first instance. *Id.* at 755 (Section 706(c) "is intended to give state agencies a limited opportunity to resolve problems of employment discrimination and thereby to make unnecessary, resort to federal relief."). This Court has stressed, therefore, that the exhaustion of administrative remedies is an absolute requirement before an employee's charges can even be "filed" with the EEOC:

> [S]ubsection [706](c) . . . imposes a special requirement for cases arising in deferral States: "no charge may be *filed* under subsection [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated . . . ." Thus, in terms, *the statute prohibited the EEOC from allowing the charge to be filed* on the date the letter was received. Although, as the Court held in *Love v. Pullman Co.*, *supra*, it was proper for the EEOC to hold

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we may properly conclude that Congress intended that the construction of § 14(b) should follow that of § 706(c).

Given the nearly identical construction that this Court has accorded provisions in Title VII and the ADEA relating to the exhaustion of administrative remedies, this Petition will provide a more comprehensive discussion of Title VII authorities and provide parallel citations to the ADEA, where appropriate.

> respondent's "complaint in 'suspended animation,' *automatically filing it upon termination of the State proceedings*," 404 U.S., at 526, 92 S.Ct., at 618 (emphasis added), that means that the charge was *filed* on the 351st day, not the 291st. By that time, however, the 300-day period had run and the filing was therefore untimely.

Mohasco, 447 U.S. at 817 (footnote omitted; italicized emphasis and third brackets in original; other emphasis and brackets added); *accord Oscar Mayer*, 441 U.S. at 758 (construing the parallel provision under the ADEA and holding "that under § 14(b) of the ADEA, as under § 706(c) of Title VII, resort to administrative remedies in deferral States by individual claimants is mandatory, not optional.").[15]

B. The Process Through Which an Employee Is Allowed to Comply with Exhaustion of Administrative Remedies Has Been Liberally Construed.

The exhaustion requirement is mandatory. Satisfaction of that requirement, though, is intended to be a simple process in most instances. Beginning with *Love v. Pullman Co.*, 404 U.S. 522 (1972), and consistent with the remedial purposes of federal anti-discrimination statutes, this Court has historically interpreted provisions relating to the exhaustion of remedies in a manner that imposes a minimal burden upon the complainant. Some examples are illustrative and important because, unlike the Ninth Circuit's decision here, they have

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[15] Similarly, compliance with the statutes of limitation in Title VII is strictly enforced, *see Morgan*, 122 S. Ct. at 2070 (this Court has stated that "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.") (Quoting *Mohasco*, 447 U.S. at 826 (construing the ADEA)), subject only to excuse based equitable considerations, "to be applied sparingly." *Morgan*, 122 S. Ct. at 2072, 2076; *accord Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982).

never negated the basic statutory requirement that state or local administrative remedies must be exhausted before charges can be "filed" with the EEOC under section 706(c) of Title VII and section 14(b) of the ADEA.

1. The EEOC itself may initiate the local proceeding in a deferral state on behalf of the charging party; the charging party is not necessarily required to do it. *Love*, 404 U.S. at 525. In addition, the EEOC may commence the state proceedings by forwarding the charges orally, rather than in writing. *Id.*

2. When a plaintiff who works in a deferral state submits charges to the EEOC, and the EEOC forwards them to a state agency with subject matter jurisdiction (the missing link in the present case), the charges are "initially instituted" with the state agency, rather than the EEOC, for purposes of triggering the 300-day statute of limitations in 42 U.S.C.A. § 2000e-5(e)(1). The EEOC is jurisdictionally precluded by Section 2000e-5(c) from "filing" the charges until the state or local agency with primary jurisdiction conducts its own investigation for 60 days, or earlier terminates it. *Mohasco Corp. v. Silver*, 447 U.S. at 817; *Oscar Mayer*, 441 U.S. at 758; *Ricks*, 449 U.S. at 254 (state agency has "primary jurisdiction").

3. Charges "commenced" with an appropriate state or local agency under Section 2000e-5(c) need not be timely under the state's limitations period for the EEOC thereafter to assume jurisdiction, "file" the charges, and proceed with its investigation, provided that the charges are otherwise timely within the 300-day limitations period in Section 2000e-5(e)(1). When the limitations period has run under state law, the charging party has satisfied both the "commencement" of state proceedings and the "earlier terminated" requirements of Section 2000e-5(c), which transfers jurisdiction to the EEOC, and the charges are "filed." *Oscar Mayer*, 441 U.S. at 758.

4. Worksharing agreements between state or local fair employment practices ("FEP") agencies and the EEOC permit the agencies to serve as reciprocal agents for the submission of charges. Such agreements allow the FEP agencies to waive conditionally the 60-day period of primary jurisdiction, permitting the EEOC to assume jurisdiction under Section 2000e-5(c) and immediately "file" the charges. This triggers the 300-day limitations period in 2000e-5(e)(1), with the FEP agency retaining jurisdiction to pursue the matter further, should federal intervention fail to resolve the dispute. *EEOC v. Commercial Office Prods. Co.*, 486 U.S. 107.

C. The Ninth Circuit's Decision Is Contrary to the Plain Meaning and Purpose of the Exhaustion Requirement in Title VII and the ADEA.

The Ninth Circuit's extraordinarily permissive interpretation of Section 706(c) of Title VII and Section 14(b) of the ADEA nullifies the exhaustion of remedies and deprives state and local agencies of their primary jurisdiction. Under the plain and unambiguous meaning of those provisions, plaintiffs never exhausted their administrative remedies. Rather, they intentionally caused the EEOC to refer their charges to a local agency that lacked subject matter jurisdiction to investigate and take any action with respect to their charges. It is undisputed that the Seattle OCR had no "authority to grant or seek relief" from the solely Idaho-based discriminatory practices alleged in plaintiffs' charges. 42 U.S.C.A. § 2000e-5(c); 29 U.S.C.A. § 633(b). The only evidence in the record indicates that plaintiffs were fully aware that the IHRC was the only state or local agency with primary jurisdiction, and misinformed the EEOC so it would not forward the charges to the IHRC.

The Ninth Circuit did not construe or rely upon the existence of a worksharing agreement between the EEOC and any other agency, either in Washington or Idaho. Nor could

it do so, because no such agreement was in the record. Instead, the Ninth Circuit said simply that since plaintiffs worked in a deferral state (Idaho) and submitted charges in another deferral state (Washington) that has an FEP agency, plaintiffs had exhausted their administrative remedies and were entitled to "file" their charges with the EEOC within the 300-day limitation period. (App. A; 2a-3a.) The Ninth Circuit opinion does not even mention which FEP agency in Washington supposedly supplied the requisite waiver of primary jurisdiction that would have to precede filing of plaintiffs' claims by the EEOC. (*Id.*)[16] Nothing in the text of Section 706(c) of Title VII or Section 14(b) of the ADEA authorizes claimants effectively to abrogate the exhaustion requirement that must be met before charges can be "filed" with the EEOC.

II. THE PETITION SHOULD BE GRANTED BECAUSE THE NINTH CIRCUIT'S DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT AND OTHER UNITED STATES COURTS OF APPEALS.

The decision of the Ninth Circuit conflicts with decisions of other federal circuit courts involving charging parties who have been at fault or responsible for the failure to exhaust their administrative remedies through an FEP agency with subject matter jurisdiction.

In its determination that local remedies were exhausted sufficiently to confer EEOC agency jurisdiction to "file" the charges, the Ninth Circuit ignores FEP agency jurisdiction and jumps to the next inquiry: timeliness of the plaintiffs' federal claims under the applicable statute of limitations. By contrast, other circuits hold that at-fault failure to defer

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[16] The point is that no Washington FEP agency could perform that function, because no Washington FEP agency would have jurisdiction.

charges through an FEP agency with jurisdiction deprives the EEOC of agency jurisdiction to "file" the charges, a failure to exhaust which renders the claims technically time-barred. In those circumstances, the only other question the circuit courts address is whether the plaintiff's failure to exhaust is subject to equitable excuse under doctrines such as tolling, waiver and estoppel. The Ninth Circuit's approach, to eliminate those inquiries out of hand, stands in contrast to that of the other circuits.

Here, the Ninth Circuit accorded no effect to the lack of local agency jurisdiction in the Seattle OCR with respect to plaintiffs' charges. It found exhaustion of remedies notwithstanding plaintiffs' misdirection to the EEOC that it defer the charges to an FEP agency with no authority to grant or seek relief from the alleged discrimination. The Ninth Circuit impermissibly assumed the EEOC had jurisdiction to "file" plaintiffs' charges and then applied the 300-day statutes of limitation under Title VII and the ADEA claim to determine whether plaintiffs' federal court filings were timely. Specifically, the Ninth Circuit held:

> Because [plaintiffs] filed with the EEOC in a deferral state that has a fair employment practices (FEP) agency,[1] they were entitled to 300 days. *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1174 (9th Cir. 1999); *Bouman v. Block*, 940 F.2d 1211, 1220 (9th Cir. 1991) (if the EEOC transmits the charge to the FEP agency during the deferral period, the 300-day period applies); 19 C.F.R. § 1601.13(a)(4)(ii) (if the FEP agency has waived its period of exclusive processing, the charge is "deemed filed" with the EEOC upon receipt of the document and the 300-day period applies.

[1] Both Washington and Idaho are both deferral states with FEP agencies. 29 C.F.R. §§ 1601.71, 1601.80.

(App A; 2a & n.1.)

The Ninth Circuit, alone among the circuit courts, fails to acknowledge that agency jurisdiction is fundamentally different from the jurisdiction of the federal district courts. The EEOC and state and local agencies are creatures of statute with statutorily defined jurisdiction. The statutes, 42 U.S.C.A. § 2000e-5(c) and 29 U.S.C.A. § 633(b), are explicit: the EEOC can assume subject matter jurisdiction only after a state or local agency with subject matter jurisdiction has investigated for 60 days or has earlier terminated its proceedings. The state or local agency has jurisdiction to satisfy the deferral prerequisite to EEOC jurisdiction only if it has "authority to grant or seek relief" from the alleged discrimination. *Id.* Exhaustion of remedies is therefore determined through strict adherence to agency jurisdiction.

By contrast, federal *courts* have inherent discretionary equitable powers that the EEOC and FEP agencies do not. This Court has specifically ruled that the failure to comply with the procedural prerequisites of Title VII or ADEA claims before filing a lawsuit is non-jurisdictional and is subject to tolling. *See Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). Equitable principles may in extra-ordinary circumstances excuse compliance with exhaustion requirements. *See, e.g., Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147 (1984); *Burnett*, 380 U.S. 424; *Miller v. Int'l Tel. & Tel. Corp.*, 755 F.2d 20 (2d Cir. 1985). For this reason, while the issue of whether exhaustion has occurred is determined solely as a matter of agency jurisdiction, the district court's jurisdiction remains a matter of equitable discretion, even when administrative remedies have not been exhausted.

The Ninth Circuit erred because it applied the statute of limitations when exhaustion had not occurred, through the lack of local agency jurisdiction in the Seattle OCR. When, as here, the plaintiffs "forum shop" by directing the EEOC to defer charges to a state or local agency that the plaintiffs

know to be without jurisdiction, the statute of limitations is not an issue, because it will always be exceeded unless the proper FEP agency can be timely notified. Tolling and equitable considerations are the only means by which the claims can be saved.

By leaping over the requisite exhaustion inquiry or presuming exhaustion by deferral to an FEP agency that lacked jurisdiction, the Ninth Circuit's decision conflicts materially with the following circuit court decisions, which do make the exhaustion inquiry and discuss tolling issues when plaintiffs are at fault for failing to exhaust remedies through an FEP agency with jurisdiction.

Citicorp Person-to-Person Fin. Corp. v. Brazell, 658 F.2d 232 (4th Cir. 1981). The Fourth Circuit held that the plaintiff's claim was time-barred because neither the plaintiff nor the EEOC had forwarded her charges to the appropriate FEP agency, and the EEOC had failed to do so because plaintiff had misrepresented that she had forwarded, or soon would forward, the charges to the FEP agency herself. The court found no justification for applying any principles of tolling when the mistake was the plaintiff's, and not that of the EEOC or the defendant.

Cornett v. AVCO Fin. Servs., 792 F.2d 447 (4th Cir. 1986). The Fourth Circuit upheld dismissal of the plaintiff's ADEA claim for failure to exhaust administrative remedies. The EEOC mistakenly had forwarded the plaintiff's charges to a local agency in another state that had no jurisdiction, but provided notice of the transfer to the plaintiff. The court declined to apply tolling, because the plaintiff sat on his rights and failed to inform the EEOC that it had directed his charges to the wrong FEP agency.

Maynard v. Pneumatic Prods. Corp., 256 F.3d 1259 (11th Cir. 2001). The plaintiff's EEOC charges were held to be untimely because (1) they were filed 292 days after the alleged discrimination occurred, (2) the plaintiff did not file

with an FEP agency, (3) only a worksharing agreement might have allowed the FEP agency to waive its primary jurisdiction under Section 706(c), and (4) the record contained no worksharing agreement.

To summarize: In the Ninth Circuit and no other, discrimination claimants may satisfy the statutory requirement of state or local administrative exhaustion by directing EEOC deferral to FEP agencies that lack jurisdiction to grant or seek relief, effectively nullifying the deferral process. In other circuits a charging party who thwarts timely state or local exhaustion through his or her own fault has abrogated federal protection. The Ninth Circuit excuses a claimant from the statutorily mandated exhaustion requirement, even if the claimant effectively induces the failure.

CONCLUSION

For the foregoing reasons, Petitioners respectfully urge this Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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August 30, 2002

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed April 8, 2002]

No. 00-35508
D.C. No. CV-98-00342-EJL

PATRICIA A. COLE, *et al.*,
Plaintiffs-Appellants,

v.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION,
an entity of unknown type, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, Chief District Judge, Presiding

Argued and Submitted March 8, 2002 Seattle, Washington

MEMORANDUM [*]

Before: ALARCÓN, SILVERMAN, *Circuit Judges*, and TEILBORG, *District Judge* [**]

Patricia Cole, Cathy Leal and Becki Trueblood appeal the district court's summary judgment dismissal of their

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

[**] The Honorable James A. Teilborg, United States District Judge for the District of Arizona, sitting by designation.

complaint alleging violations of Title VII, the Equal Pay Act (EPA) and the Age Discrimination in Employment Act (ADEA) against TCI Media Services, Bruce Wetten and Edward Moore. The district court found that appellants had not filed timely charges with the EEOC and rejected the EPA claim and Leal's constructive discharge claim on the merits.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and review the district court's grant of summary judgment de novo. *Balint v. Carson City*, 180 F.3d 1047, 1050 (9th Cir. 1999) (en banc). We affirm in part, reverse in part and remand for further proceedings. Because the parties are familiar with the facts, we recite them only as necessary to this decision.

Appellants first argue that they were entitled to the 300-day limitation period so their charges were timely filed with the EEOC. We review the district court's holding that the claims are barred by the Title VII statute of limitations de novo. *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1175 (9th Cir. 2000). We find that all three appellants were entitled to the 300-day period. Appellants' filings of charges in Idaho and Washington were proper. *See* 29 C.F.R. §§ 1601.8 and 1626.5. Leal and Trueblood filed their charges directly with the EEOC no later than October 15, 1997, when the EEOC acknowledged receipt of their signed declarations that were the equivalent of charges. *See* 29 C.F.R. § 1601.12(b); *Cf. Casavantes v. California State University, Sacramento*, 732 F.2d 1441, 1443 (9th Cir. 1984) (a completed EEOC intake questionnaire constitutes a charge). Because appellants filed with the EEOC in a deferral state that has a fair employment practices (FEP) agency,[1] they were entitled to 300 days. *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1174 (9th Cir. 1999); *Bouman v. Block*, 940 F.2d 1211, 1220 (9th

[1] Both Washington and Idaho are both deferral states with FEP agencies. 29 C.F.R. §§ 1601.71, 1601.80.

Cir. 1991) (if the EEOC transmits the charge to the FEP agency during the deferral period, the 300-day period applies); 29 C.F.R. § 1601.13(a)(4)(ii) (if the FEP agency has waived its period of exclusive processing, the charge is "deemed filed" with the EEOC upon receipt of the document and the 300-day period applies).

Cole filed her charge with the Idaho Human Rights Commission on November 24, 1997 and that agency transmitted the charge to the EEOC for processing on December 12, 1997. Her charge was "deemed filed" with the EEOC on December 12, 1997 and the 300-day period applies to Cole. *Id.* § 1601.13(b). Cole's counsel faxed and mailed the letter and declaration adding the ADEA claim to the charge on December 31, 1997. Thus, the ADEA charge was filed on December 31, 1997. 29 C.F.R. §1626.7; *Pejic v. Hughes Helicopters, Inc.*, 840 F.2d 667, 675 (9th Cir. 1988) (an ADEA charge is not filed until the claim is added to the charge).

Because appellants were entitled to the 300-day limitations period, their claims were timely and the district court erred in dismissing the complaint as time-barred.

Appellants argue that the district court erred in dismissing their EPA claims because they failed to prove a prima facie case. Although appellants came forward with sufficient evidence to raise a genuine issue of material fact regarding pretext, they failed to come forward with evidence to establish that TCI paid different wages to males for substantially equal work. *Maxwell v. City of Tucson*, 803 F.2d 444, 446 (9th Cir. 1986). Thus, summary judgment was proper on the EPA claims.

Leal argues that the district court erred in dismissing her constructive discharge claim because Moore, the cause of the hostile work environment, left the company months before Leal quit. We agree. Leal alleged in her charge and came

forward with evidence that her supervisor, Wetten, created much of the hostile environment and Wetten remained Leal's supervisor until Leal's resignation. Thus, Leal came forward with sufficient evidence to raise a genuine issue of material fact of whether the hostile environment and discrimination continued until the date of her resignation. *Cf. Draper v. Coeur Rochester, Inc.*, 147 F.3d 1104, 1108 (9th Cir. 1998) (holding that failure to offer facts regarding incidents after a certain date did not justify summary judgment because plaintiff's statement during her deposition that the conduct persisted for most of her term of employment created a genuine issue of material fact).

AFFIRMED in part, REVERSED in part and REMANDED. Each party shall bear its own costs on this appeal.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed April 8, 2002]

No. 00-35508
D.C. No. CV-98-00342-EJL

PATRICIA A. COLE, *et al.*,
Plaintiffs-Appellants,

v.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION,
an entity of unknown type, *et al.*,
Defendants-Appellees.

ORDER

Before: ALARCÓN and SILVERMAN, *Circuit Judges*, and TEILBORG, *District Judge* [1]

Appellees' Petition for Rehearing is DENIED.

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[1] The Honorable James A. Teilborg, United States District Judge for the District of Arizona, sitting by designation.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed April 8, 2002]

NO. 00-35508
CT/AG#: CV-98-00342-EJL

PATRICIA A. COLE; CATHY LEAL; BECKI TRUEBLOOD,
Plaintiffs-Appellants,

v.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION, an entity of unknown type; TCI MEDIA SERVICES, BOISE, an entity of unknown type; TCI COMMUNICATIONS, INC., an entity of unknown type; BRUCE WETTEN, an individual; EDWARD MOORE, an individual; UNITED CABLE TELEVISION CORP., a Delaware corporation; TELECOMMUNICATIONS, INC., a Delaware corporation,
Defendants-Appellees.

Appeal From the United States District Court
for the District of Idaho (Boise).

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Idaho (Boise) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

[Filed May 18, 2000]

Case No. CV98-342-S-EJL

PATRICIA A. COLE, CATHY LEAL, AND BECKI TRUEBLOOD,
Plaintiffs,

vs.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION, an entity of unknown type; TCI MEDIA SERVICE, Boise, an entity of unknown type; UNITED CABLE TELEVISION CORP., a Delaware Corporation; TCI COMMUNICATIONS, INC., a Delaware corporation; TELECOMMUNICATIONS, INC., a Delaware corporation; BRUCE WETTEN, an individual; and EDWARD MOORE, an individual,

Defendants.

AMENDED ORDER

Plaintiffs Patricia A. Cole, Cathy Leal and Becki Trueblood, all former employees of TCI Media Services, bring this lawsuit against TCI, *et al.*, alleging claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act ("ADEA"), the Equal Pay Act ("EPA"), and various state law causes of action. TCI moves for summary judgment on all Plaintiffs' claims. The motion is now ripe. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be

significantly aided by oral argument, this matter shall be decided on the record before this Court without a hearing.

UNDISPUTED FACTS

The Plaintiffs were employed in TCI's Boise, Idaho office as account executives, to sell television advertising spots on TCI cable to area businesses. Plaintiff Cole was hired as an account executive on July 8, 1996, and resigned on April 7, 1997. Plaintiff Leal was employed as an account executive from August 3, 1993 until she resigned on October 1, 1997. Plaintiff Trueblood began working as an account executive on July 12, 1994, and resigned on June 3, 1997. Defendant Bruce Wetten, acting in his capacity as General Manager, supervised the Plaintiffs during their employment. At the same time that Plaintiffs worked for TCI, Defendant Edward Moore also was an employee of TCI, first as an account executive, then as a senior account executive and finally as a team leader. Moore tendered his resignation to TCI on March 31, 1997, and it was accepted on April 18, 1997.

DISCUSSION

Plaintiffs generally allege that they were "subjected to repeated and continual sexual harassment and treated differently because of their gender." (Pls.' Mem. in Opp'n at 1). They specifically allege that Moore "continually repeated offensive conduct in the work place," such as inappropriate touching, and that Wetten knew of Moore's inappropriate behavior but did not inform his superiors. (*Id.* at 2). Plaintiffs additionally allege that Wetten managed his female employees in a demeaning manner and gave preferential treatment to men when handing out promotions and assigning accounts. Cole also alleges she was discriminated against because of her age, and all Plaintiffs assert several claims arising under state law causes of action as well.

TCI denies the Plaintiffs' charges and moves for summary judgment on all the claims. Summary judgment is

appropriate if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. *Summers v. A. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

1. Title VII Claims

Viewing the allegations contained in the Complaint in a light most favorable to the Plaintiffs, they appear to allege three distinct claims under Title VII: 1) disparate treatment, 2) hostile work environment, and 3) constructive discharge. TCI contends that all these claims are time-barred by the limitations period prescribed by Title VII. (Def.'s Mem. in Supp. at 2-4; Def's Reply at 2-5). In this regard, TCI notes that Plaintiffs were required to file a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). To be "timely" under Title VII "a complainant [must] file a charge with the EEOC within 180 days of the last act of alleged discrimination, unless the complainant initially institutes proceedings with a state or local agency, in which case the EEOC charge must be filed within 300 days." *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000). Here it is undisputed that all the alleged events supporting Plaintiffs' claims occurred in Idaho. Therefore, the Idaho Human Rights Commission ("IHRC") is the state or local agency with which the Plaintiffs could "initially institute[] proceedings." *See* 42 U.S.C. § 2000e-5(e)(1) (stating that the relevant state or local agency is the one that has the "authority to grant or seek relief from such [unlawful employment] practice"). However, Plaintiffs do not contend, and the record does not disclose, that any charge was filed with the IHRC. Accordingly, Plaintiffs must show that they filed a charge with the EEOC within 180 days "after the alleged unlawful employment practice occurred." *Draper v. Coeur Rochester, Inc.*, 147 F.3d 1104, 1107 (9th Cir. 1998).

The record shows that Plaintiffs' charges were received by the EEOC on December 16,1997. (Additional Aff. of Gregory C. Tollefson, Exs. 88 & 173; Aff. of Gregory C. Tollefson in Supp. of Reply, Ex. C).[1] Thus, to be timely the Plaintiffs' charges must include an allegation of an unlawful employment practice that occurred within the 180 day period running from June 19, 1997 to December 16, 1997. *See Draper*, 147 F.3d at 1107.

The record clearly demonstrates that neither Cole's nor Trueblood's charges are timely. The last unlawful employment practice alleged by Cole occurred on April 4, 1997, when she claims she was constructively discharged. (*See, e.g.*, Additional Aff. of Gregory C. Tollefson, Ex. 88 (Charge of Discrimination and Compl. at 2)). Similarly, the last unlawful employment practice alleged by Trueblood occurred on June 3, 1997, when she claims she was constructively discharged. (*See, e.g.*, Additional Aff. of Gregory C. Tollefson, Ex. 175 (Decl. of Trueblood in Supp. of Charge of Discrimination at 1)). Because the last unlawful employment practice alleged by Cole and Trueblood occurred prior to June 19, 1997, and therefore more than 180 days prior to the filing of their charges with the EEOC, the Title

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[1] The charges of discrimination made by Leal and Trueblood were stamped as "received" by the EEOC on December 16, 1997. (Additional Aff. of Gregory C. Tollefson, Ex. 173; Aff. of Gregory C. Tollefson in Supp. of Reply, Ex. C). For the purpose of resolving the Present motion, the Court will deem the date a charge was "received" as also the date the charge was "filed." There is no record evidence to show that Cole's charges ever were received by the EEOC. (*See, e.g.*, Additional Aff. of Gregory C. Tollefson, Ex. 88). Resolving all possible inferences in Cole's favor, the Court will assume that Cole's charge of discrimination also was "filed" with the EEOC on December 16, 1997.

VII claims of Cole and Trueblood are untimely and barred by the statute of limitations.[2] *See Santa Maria*, 202 F.3d at 1176.

With regard to Leal's charges, and addressing each of her Title VII claims individually, there is no evidence of an unlawful employment practice to support Leal's disparate treatment claim that occurred after June 19, 1997. Leal's claim of disparate treatment is based on her allegations that 1) TCI discriminated against women with regard to promotions, and 2) TCI discriminated against women with regard to the assignment of accounts. All the evidence that Leal points to with respect to the promotion charges are events that transpired prior to June 19, 1997. (*See* Pls.' Statement of Disputed Facts ¶ 54; Aff. of Bruce Wetten ¶¶ 7, 9). Likewise, the evidence cited in support of the charges concerning account assignments involve events that occurred before June 19, 1997. (Pls.' Mem at 9, 10; Pls.' Statement of Disputed Facts ¶55). And the "direct evidence of discriminatory animus" that Leal relies on also relates to statements made prior to June 19, 1997. (Pls.' Mem. at 8-9; Pls.' Statement of Disputed Facts ¶ 56). Accordingly, the charges filed by Leal with the EEOC alleging disparate treatment are untimely and barred by Title VII's statute of limitations.

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[2] The prescribed 180 day period "is not a jurisdictional bar, but it is treated as a violation of a statute of limitations, complete with whatever defenses are available to such a violation, such as equitable tolling and estoppel." *Santa Maria*, 202 F.3d at 1176. Plaintiffs have not argued that any defense to the statute of limitation is applicable here. They have, however, asserted that charges of discrimination were filed "with the Federal and State EEOC agencies in Seattle, Washington, in and around October, 1997." (Pls.' Mem. at 4). But the evidence cited by Plaintiffs does not in fact support this assertion. (*See* Pls.' Statement of Disputed Facts ¶ 59 (citing Additional Aff. of Gregory C. Tollefson, Exs. 15, 88 & 173)). And there is nothing in the record that shows that charges were filed in October, 1997, or ever filed with any state or local agency.

A review of Leal's evidence offered in support of her hostile environment claim results in a similar conclusion. The majority of Leal's allegations with regard to this claim focus on the conduct of Moore. However, Moore's employment terminated as of April 18, 1997, and therefore by June 19, 1997 he could no longer be the source of any harassment complaint. The incidents that Leal attributes to Wetten all occurred prior to June 19, 1997. (*See, e.g.*, Pls.' Statement of Disputed Facts ¶ 29). Therefore, the charge alleging a hostile work environment also is time-barred.

The event giving rise to Leal's last claim, constructive discharge, is deemed to have occurred on the date she resigned. *See Draper*, 147 F.3d at 1110 ("We hold . . . that the date of discharge triggers the limitations period in a constructive discharge case . . . ."). Because that date, October 1, 1997, is within the 180 day limitations period, the charge was timely filed with the EEOC, and the Court may consider it. To survive summary judgment on this claim, however, Leal must show that there are triable issues of fact as to whether on October 1, 1997 "a reasonable person in her position would have felt that she was forced to quit because of intolerable and discriminatory working conditions." *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1465 (9th Cir. 1994), *cert. denied*, 513 U.S. 1082 (1995). Given that the constructive discharge claim is related to the disparate treatment and hostile environment claims, *see Draper*, 147 F.3d at 1110 & n.2, it is not surprising that Leal is unable to come forward with any competent evidence to show that she was subject to intolerable working conditions on October 1, 1997.

As discussed above, Edward Moore, the person Leal alleges was primarily responsible for creating the hostile work environment, had left TCI by April 18, 1997. And there are no acts by Wetten after June 19, 1997 that Leal relies on to support her constructive discharge claim. Instead, Leal

makes the general assertion that "I left TCI because I finally could no longer function in a productive manner in a work environment that was so hostile and unfair to the women sales account executives." (Aff. of Cathy Leal ¶ 4). Without citation to specific incidents, Leal cannot defeat summary judgment based on this conclusory assessment. *Cf. Draper*, 147 F.3d at 1110. Because the record is devoid of evidence to show the existence on October 1, 1997 of "intolerable and discriminatory working conditions," TCI is entitled to summary judgment on Leal's constructive discharge claim. *Montero v. AGCO Corp.*, 192 F.3d 856, 860 (9th Cir. 1999) (holding that plaintiff failed to present triable issue of fact on constructive discharge claim where plaintiff resigned 3 to 4 months after harassment had ceased); *Steiner*, 25 F.3d at 1465 (affirming the district court's dismissal of an employee's constructive discharge claim, when the employee resigned two and one-half months after the harassment had ceased); *see also Huskey v. City of San Jose*, 204 F.3d 893, 900-02 (9th Cir. 2000).

In sum, with the exception of Leal's constructive discharge claim, all the Plaintiffs' Title VII claims are time-barred and TCI is entitled to summary judgment on these claims. Because Leal fails to present a triable issue of fact on her constructive discharge claim, TCI is entitled to summary judgment on this claim as well.

2. Cole's ADEA Claim

Cole's ADEA claim is subject to the same 180 day requirement as her Title VII claims. *See Pejic v. Hughes Helicopters, Inc.*, 840 F.2d 667, 674-75 (9th Cir.1988). For the reasons discussed above, Cole's ADEA claim is time-barred and the Court will enter summary judgment on this claim in favor of TCI.

3. EPA Claims

Plaintiffs claim that TCI violated the Equal Pay Act by 1) "denying plaintiff[s] . . . accounts earned, and giving the same to male account executives," and 2) "providing similarly situated male account executives with bonuses, benefits and other 'perks' not offered or provided to plaintiff[s]."[3] "To establish a prima facie case of wage discrimination, a plaintiff must show that the employer pays different wages to employees of the opposite sex for substantially equal work." *Maxwell v. Tucson*, 803 F.2d 444, 446 (9th Cir. 1986). The EPA defines what constitutes equal work by specifying that jobs are equal if their performance requires "equal skill, effort, and responsibility" and they are performed under "similar working conditions." 29 U.S.C. S 206(d)(1). "Skill includes such considerations as experience, training, education, and ability. Effort refers to the physical or mental exertion necessary to the performance of a job. Responsibility concerns the degree of accountability required in performing a job." *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 513 (8th Cir. 1995).

Plaintiffs have provided only conclusory deposition testimony that the male account executives to whom they compare themselves earned "different wages" for "equal work." It is undisputed that all account executives earned the same base wage. (Pls.' Statement of Disputed Facts ¶ 31). Plaintiffs also acknowledge that while senior account executives earned a higher base wage and garnered a large

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[3] Plaintiffs also claim that TCI violated the EPA by denying Plaintiffs promotions based on their sex. The EPA, however, does not provide a mechanism for challenging the right to a promotion; it is concerned solely with wage discrimination. *See, e.g., Maxwell v. Tucson*, 803 F.2d 444, 445-46 (9th Cir. 1986) ("The principle of the Equal Pay Act, 29 U.S.C. § 206(d), is that employees doing equal work should be paid equal wages, regardless of sex.").

share of the "perks," they generally had more experience, responsibilities and education than account executives. (Pls.' Statement of Disputed Facts ¶¶ 54, 8, & 9). What Plaintiffs do challenge is the manner by which Wetten assigned accounts and the corresponding commission earned on those accounts by the male account executives. (Pls.' Statement of Disputed Facts ¶ 55). But Plaintiffs fail to support their challenge with any evidence to establish the amounts earned by male account executives in relation to the amounts earned by Plaintiffs. (*See id.*). They also fail to identify which male account executives performed their jobs at the same level of skill, effort and responsibility as Plaintiffs. (*See id.*). By neglecting to do so, the Plaintiffs have failed as a matter of law to make out a prima facie case and summary judgment must be entered in favor of TCI. *See Euerle-Wehle v. United Parcel Service, Inc.*, 181 F.3d 898, 901 (8th Cir. 1999) (upholding entry of summary judgment on EPA claim where plaintiff failed as a matter of law to make out a prima facie case).

4. State Law Claims

Before addressing TCI's motion for summary judgment on Plaintiffs' state law claims, it is prudent to consider whether the Court should continue to exercise jurisdiction over these claims. *Acri v. Varian Associates*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc). Where, as here, the Court has determined prior to trial that all federal claims shall be dismissed, "the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims." *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Thus, in accordance with the direction provided by the case law, and consistent with the factors set forth in 28 U.S.C. § 1367(c), the Court declines to exercise its discretion to hear the state law claims and will dismiss the claims without prejudice to the Plaintiffs' right to refiled them in state court.

ORDER

Based on the foregoing, the Court being fully advised in the premises it is HEREBY ORDERED that:

1. The Defendants' Motion for Summary Judgment (Docket No. 43) is GRANTED as to the Plaintiffs' federal law claims, including the First, Fourth, Fifth, Tenth, Thirteenth, Twentieth, and Twenty-Third claims for relief of the First Amended Complaint.

2. The Plaintiffs' remaining state law claims are DISMISSED without prejudice to the Plaintiffs' right to refile them in state court.

3. The Defendants' Motion to Compel Discovery (Docket No. 71) is DISMISSED as moot.

4. The Defendants' Motions in Limine (Docket Nos. 76, 77, 78, 79, 80, 81, 82, 83 & 84) and Motion for Leave to File Additional Motions in Limine (Docket No. 86) are DISMISSED as moot.

5. The Plaintiffs' Motions in Limine (Docket Nos. 87, 88, 89, & 90) are DISMISSED as moot.

IT IS FURTHER ORDERED that the trial scheduled for June 13, 2000, is VACATED, and that this case is DISMISSED in its entirety.

Dated this 18th day of May, 2000

/s/ Edward J. Lodge
EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

[Filed July 20, 2000]

Case No. CV98-342-S-EJL

PATRICIA A. COLE, CATHY LEAL, and BECKI TRUEBLOOD,
Plaintiffs,

vs.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION, an entity of unknown type; TCI MEDIA SERVICE, Boise, an entity of unknown type; UNITED CABLE TELEVISION CORP., a Delaware Corporation; TCI COMMUNICATIONS, INC., a Delaware corporation; TELECOMMUNICATIONS, INC., a Delaware corporation; BRUCE WETTEN, an individual; and EDWARD MOORE, an individual,

Defendants.

ORDER

Plaintiffs Patricia A. Cole, Cathy Leal and Becki Trueblood have filed a Motion for Reconsideration or, In the Alternative, Motion For a New Trial, wherein they request that the Court reconsider its decision of May 18, 2000 to grant summary judgment on Plaintiffs' federal claims in favor of Defendants TCI Media Services, *et al.* TCI opposes the Plaintiffs' motion. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this motion shall be decided on the record before this Court without a hearing.

Plaintiffs' motion is brought pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). "[A] motion for reconsideration of summary judgment is appropriately brought under either Rule 59(e) or Rule 60(b)." *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991). While both of these rules may be used to correct a judgment or order, they are distinctly and significantly different in their applicability and scope. Rule 59(e) explicitly permits a court to entertain a motion to alter or amend a judgment, and such a motion may be granted where the movant raises newly discovered evidence or points out an intervening change in controlling law or demonstrates manifest errors of law or fact. *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993), *cert. denied*, 512 U.S. 1236 (1994). Rule 60(b) relief, on the other hand, is reserved for the exceptional case and may only be granted only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) "extraordinary circumstances" which would justify relief. Fed. R. Civ. P. 60(b); *Fuller*, 950 F.2d at 1442.

In this case, the Court's ruling on TCI's Motion for Summary Judgment was based on the absence of any evidence in the record sufficient to raise a genuine issue of material fact as to whether the Plaintiffs had complied with Title VII and the ADEA's statute of limitations. As the Court explained in its Order, to be considered timely under Title VII and the ADEA "a complainant [must] file a charge with the EEOC within 180 days of the last act of alleged discrimination, unless the complainant initially institutes proceedings with a state or local agency, in which case the EEOC charge must be filed within 300 days." (Order of May 18, 2000 at 3 (quoting *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000)). To qualify for the 300-day, as opposed to the 180-day, time limitation, a complainant must file her charge with the state or local agency that has the "authority to grant or seek relief from such [unlawful

employment] practice." 42 U.S.C. § 2000e-5(e)(1). Because no party disputed the fact that all the alleged events supporting Plaintiffs' claims occurred in Idaho, (*see* Pls.' Statement of Disputed Facts ¶ 1), the Court looked for any documentation that demonstrated a charge had been filed with the Idaho Human Rights Commission ("IHRC"). With the record devoid of any such evidence, the Court applied the 180-day statute of limitations to Plaintiffs' claims. The only documentation in the record that provided evidence of a "filing" showed that the Plaintiffs' charges were received by the EEOC on December 16, 1997. The Court then concluded that the last act of alleged discrimination occurred 180 days prior to the filing of the Plaintiffs' charges with the EEOC.[1]

The Plaintiffs have now come forward with new evidence that they claim demonstrates the timely filing of their discrimination charges.[2] (*see* Pls.' Mem. in Supp. of Their Mot. at 4-17). Before considering this new evidence, however, both Rule 59(e) and Rule 60(b) indicate that the Court should determine whether the new evidence is "newly discovered evidence." *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211 (9th Cir. 1987). In this regard, Plaintiffs must show that the evidence could not have been discovered at the time of summary judgment. *Id.* Plaintiffs fail to make this showing. In fact the Plaintiffs

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[1] Plaintiff Leal's constructive discharge claim was an exception. Entry of summary judgment in favor of TCI on this claim was based on the merits.

[2] As noted in the Order of May 18, 2000, the prescribed 180-day period "is not a jurisdictional bar, but it is treated as a violation of a statute of limitations, complete with whatever defenses are available to such a violation, such as equitable tolling and estoppel." *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000). Plaintiffs have not, and do not argue in the Motion for Reconsideration or, In the Alternative, Motion For a New Trial, that any defense to the statute of limitation is applicable here. They argue instead that the new evidence shows they have in fact complied with the statute of limitations.

candidly admit that the new evidence was obtained by merely requesting the documentation from the relevant federal and state agencies. (Pls.' Mem. in Supp. of Their Mot. at 6). "Evidence is not 'newly discovered' under the Federal Rules if . . . could have been discovered with reasonable diligence." *Coastal Transfer Co.*, 833 F.2d at 211. For this reason, the Court will not consider the proffered evidence as "newly discovered evidence" under Rules 59(e) and 60(b).

Nor can the Plaintiffs rely on the "excusable neglect" provision of Rule 60(b). The Plaintiffs state that "by mistake or inadvertence, or [by] overlooking the contents of the record" the new evidence was not originally submitted at summary judgment. (Pls.' Mem. in Supp. of Their Mot. at 14, 15). However, the Ninth Circuit Court of Appeals has specifically ruled that "[n]either ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1)." *Engleson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992) (*citing Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990) (if failure to submit evidentiary materials is solely due to attorney's carelessness, then it would be an abuse of discretion for the court to grant Rule 60(b) relief)). Similarly, the Plaintiffs have not demonstrated the existence of "extraordinary circumstances" which would justify relief under Rule 60(b). *See id.* at 1044. The Court concludes, then, that consideration of the Plaintiffs' new evidence is not appropriate under either Rule 59(e) or Rule 60(b).

Moreover, even if the new evidence was considered as part of the record at summary judgment, at least as to the analysis of Trueblood and Leal's claims, it would not alter the Court's ruling. With regard to these Plaintiffs the new evidence would show that the discrimination charges had been filed with the Seattle Office of Civil Rights as well as with the EEOC. Under 42 U.S.C. § 2000e-5(e)(1), the statute of limitations is expanded to 300 days where a charge of

discrimination is filed with the state or local agency that has the "authority to grant or seek relief from such [unlawful employment] practice." Plaintiffs contend that since venue for their lawsuit was arguably proper in Washington then the filing of a discrimination charge with the Seattle Office of Civil Rights satisfied the requirement of 42 U.S.C. § 2000e-5(e)(1). However, there is no correlation between venue and the requirement of § 2000e-5(e)(1), and the Plaintiffs offer no authority to support this novel proposition. Thus, even assuming venue would have been proper in Washington, there is nothing in the record to show that the Seattle Office of Civil Rights had the "authority to grant or seek relief from [the alleged unlawful employment] practice." In fact it did not, because all events giving rise to the Plaintiffs' claims occurred in Idaho.[3] (*See* Pls.' Statement of Disputed Facts ¶ 1).

With regard to Cole's claims, the Plaintiffs argue that TCI in its opening brief failed to adequately articulate a statute of limitations challenge to Cole's EEOC filing. (Pls.' Mem. in Supp. of Their Mot. at 12). But as Plaintiffs acknowledge in their motion, "Plaintiffs, in Undisputed Fact No. 59, alleged compliance with the administrative filing requirements, citing to defendants' Exhibits in support of the Motion for Summary Judgment." (Pls.' Mem. in Supp. of Their Mot. at 5). In reply to Plaintiffs' Undisputed Fact No. 59, TCI argued noncompliance with the statute of limitations as to all three Plaintiffs. With the matter in issue, the Court reviewed the evidence cited in Plaintiffs' Undisputed Fact No. 59 and

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[3] In their Reply, the Plaintiffs also argue that certain TCI actors located in Washington "condoned the discriminatory conduct" of the TCI defendants located in Idaho, and therefore would be subject to the enforcement authority of the Seattle Office of Civil Rights. This theory, however, is directly contrary to the Plaintiffs' theory of the case at summary judgment. (*See* Pls.' Statement of Disputed Facts ¶ 1). Accordingly, the Court will not consider it.

concluded that it did not support the Plaintiffs' assertion that Cole, Leal and Trueblood had all filed charges with the EEOC and/or the Idaho Human Rights Commission, "in and around October, 1997." (Order of May 18, 2000 at 4 & n.2). In fact, as the Court noted, there was no evidence of any kind to suggest that charges had ever been filed with the Idaho Human Rights Commission. (*Id.*).

Prior to the Court's ruling, the Plaintiffs could have moved pursuant to Federal Rule of Civil Procedure 56(f) for additional time to discover documents in support of Undisputed Fact No. 59 and in opposition to the Motion for Summary Judgment. *Garrett v. City and County of San Francisco*, 818 F.2d 1515, 1518 (9th Cir.1987) (explaining that under Rule 56(f) "[t]he court may continue a motion for summary judgment if the opposing party needs to discover essential facts"); *Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 519-20 (9th Cir. 1990) (explaining that only time constraint on filing a Rule 56(f) motion is contained in Rule 56(c)). That Plaintiffs did not do so in support of Leal and Trueblood's claims undermines the contention that Plaintiffs would have supplemented the record on behalf of Cole's claims if only TCI had made it clear in its opening brief "that [it was] attacking Cole's administrative filings." (Pls.' Mem. in Supp. of Their Mot. at 12). The Court, therefore, finds no reason to exercise its discretion and reconsider its ruling of May 18, 2000.

ORDER

Based on the foregoing, and the Court being fully advised in the premises, it is HEREBY ORDERED that the Plaintiffs' Motion for Reconsideration or, In the Alternative, Motion For a New Trial (Docket No. 95) is DENIED.

Dated this 18th day of July, 2000

/s/ Edward J. Lodge
EDWARD J. LODGE

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No. 98-CV-342

PATRICIA A. COLE, CATHY LEAL, and BECKI TRUEBLOOD,
Plaintiffs,

vs.

TCI MEDIA SERVICES, GREAT NORTHWEST REGION, an entity of unknown type; TCI MEDIA SERVICE, Boise, an entity of unknown type; UNITED CABLE TELEVISION CORP., a Delaware Corporation; TCI COMMUNICATIONS, INC., a Delaware corporation; TELECOMMUNICATIONS, INC., a Delaware corporation; BRUCE WETTEN, an individual; and EDWARD MOORE, an individual,

Defendants.

PLAINTIFF'S STATEMENT OF DISPUTED FACTS AND ADDITIONAL MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

DEFENDANT MATERIAL FACTS	PLAINTIFF'S DISPUTED FACTS AND ADDITIONAL FACTS IN DISPUTE
1. All Plaintiffs have conceded that their entire employment with TCI Media Services took place in Idaho, that they were hired and employed for the entire duration of their employment in the Boise, Idaho office, that they were never employed in Washington or any other state. (Ex. 26 at Responses 2-4) Consequently; all of the alleged claims in the Complaint and in Plaintiffs' EEOC charges were based entirely on acts that took place in Idaho if they occurred anywhere.	1. Plaintiffs do not dispute this fact.
2. Defendant Wetten has at all relevant times been employed by United Cable Television Corp.,d.b.a TCI Media Services ("UCTC") as General Manager in its Boise, Idaho office with full supervisory authority over Plaintiffs. (Wetten, ¶2.)	2. Plaintiffs do not dispute this fact.
3. Defendant Edward Moore was employed by UCTC from May 6, 1993 until April 18, 1997. (Ex. 94, 113.) He was initially employed as an Account Ex-	3. Plaintiffs do not dispute this fact.

ecutive until July of 1996, and he was then employed as a Senior Account Executive until September 16, 1996. (Wetten,. 395:22-396:2; Ex.99.) He was employed as a Team Leader from September 16, 1996 until he tendered his resignation on or about March 31, 1997. (Moore, 274:19-275:3.)	
4. Moore was never the supervisor of Plaintiffs. (Trueblood, 139:3-8.) He was not in charge of or directed to, directly supervise the Plaintiffs. Specifically, during the period of July, 1996 to April 1997 when he was a Senior Account Executive and when he was	4. Disputed. The position of Team Leader was designated as a management position, which included supervisory management duties. (Taylor at 65:10-68:11; 70:4-19.) Lead described Ed Moore's position as management position. team leader as a (Leal at

Rcvd 12/16/97

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY: ☐ FEPA ☒ EEOC

CHARGE NUMBER: 380980278

Seattle Office for Civil Rights and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.): Ms. Cathy Leal

HOME TELEPHONE (Include Area Code):

STREET ADDRESS CITY, STATE AND ZIP CODE: C/O Kenneth D. Simoncini, Atty, 1694 The Alameda, San Jose, CA

DATE OF BIRTH: 11/12/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME: T C I Media Services

NUMBER OF EMPLOYEES, MEMBERS: Cat D (501 +)

TELEPHONE (Include Area Code):

STREET ADDRESS CITY, STATE AND ZIP CODE: 18 West Mercer, Suite 100, Seattle, WA 98119

COUNTY: 033

NAME: T C I Media Services Boise

TELEPHONE NUMBER (Include Area Code):

STREET ADDRESS CITY, STATE AND ZIP CODE: 5475 Gage St., Boise, Id 83706

COUNTY:

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☒ OTHER (Specify) Equal Pay

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST
10/01/97
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I was hired by this company on 8-3-93. On a continuous basis from that date until I was forced to constructively discharge my employment, I was subjected to a hostile, intimidating, and unwelcome atmosphere of sexual harassment, adverse terms and conditions of employment, denied promotions and denied equal wages and benefits compared to male counterparts.

I believe that I have been discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act.

RECEIVED
SEATTLE-EEOC
1997 DEC 16 A 9:52

EA 001457

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

12-11-8-97 X Cathy Leal

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

BEST AVAILABLE COPY

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement Before completing this form.

AGENCY: ☐ FEPA ☒ EEOC

CHARGE NUMBER: 38D980279

Seattle Office for Civil Rights and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.): Ms. Becki Trueblood

HOME TELEPHONE (Include Area Code):

STREET ADDRESS, CITY, STATE AND ZIP CODE: C/O Kenneth D. Simoncini, Atty. 1694 The Alameda, San Jose, CA

DATE OF BIRTH: 04/26/63

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME: T C I Media Services, Great N W Reg

NUMBER OF EMPLOYEES, MEMBERS: Cat D (501 +)

TELEPHONE (Include Area Code):

STREET ADDRESS, CITY, STATE AND ZIP CODE: 18 West Mercer, Suite 100, Seattle, WA 98119

COUNTY: 033

NAME: T C I Media Services Boise

TELEPHONE NUMBER (Include Area Code):

STREET ADDRESS, CITY, STATE AND ZIP CODE: 5475 Gage St., Boise, I D 83706

COUNTY:

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☒ OTHER (Specify) Equal Pay

DATE DISCRIMINATION TOOK PLACE
EARLIEST: LATEST: 06/03/97
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I was hired by this company on 7 12 74. On a continuous basis from that date until I was forced to constructively discharge my employment, I was subjected to a hostile, intimidating, and unwelcome atmosphere of sexual harassment, adverse terms and conditions of employment, denied promotions and equal wages and benefits compared to male counterparts.

I believe that I have been discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act.

RECEIVED
EEOC-EEOC
DEC 16 A 9:52

ER 001616

EXHIBIT
173
TRUEBLOOD 1-12-00

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

X 11/6/97 X Becki Trueblood
Date — Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

T 0123

CHAR OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY: ☐ FEPA ☒ EEOC

CHARGE NUMBER: 380980334

Seattle Office for Civil Rights and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.): Ms. Patricia A. Cole

HOME TELEPHONE (Include Area Code): (208) 362-5555

STREET ADDRESS: 4878 Chinook Avenue

CITY, STATE AND ZIP CODE: Boise, ID 83709

DATE OF BIRTH: 01/23/54

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME: T.C.I. Media Services

NUMBER OF EMPLOYEES, MEMBERS: Cat C (201-500)

TELEPHONE (Include Area Code): (206) 526-8400

STREET ADDRESS: 18 W Mercer, Suite 100

CITY, STATE AND ZIP CODE: Seattle, WA 98119

COUNTY: 033

NAME: T.C.I. Media Services Boise

TELEPHONE NUMBER (Include Area Code):

STREET ADDRESS: 5475 Gage St.

CITY, STATE AND ZIP CODE: Boise, ID 83706

COUNTY:

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☒ OTHER (Specify) Equal Pay

DATE DISCRIMINATION TOOK PLACE
EARLIEST: 07/08/96
LATEST: 04/04/97
☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I was employed by the above respondent as an Account Executive from July 8, 1996 until the date of my constructive discharge on April 4, 1997.

Throughout my tenure with this employer, I was subjected to a hostile work environment in which I was denied pay and benefits equitable with those accorded similarly situated male comparators; lucrative sales assignments were taken from me and given to male comparators; I was denied promotion; and I was sexually harassed, both physically and verbally. Repeated complaints to management failed to resolve the continuing harassment and discrimination, compelling my constructive discharge on April 4, 1997.

I charge that, in all of these particulars, Respondent discriminated against me because of my gender, female, and my age, then 43, in violation of Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; and the Age Discrimination in Employment Act of 1967.

(Motteen)

000541

0004451

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

X 1/16/98 X Patricia Cole
Date — Charging Party (Signature)

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

EEOC FORM 5 (Rev. 06/94)

FILE COPY

EEOC Form 161-B (10/96) U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Cathy Leal
10655 Conway Ave.
Boise, ID 83709

From:
EEOC - Seattle District Office
909 First Avenue, Suite 400
Seattle, WA 98104-1061

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
380980278	F. Frances Palmer	(206) 220-6865

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

[ ] More than 180 days have passed since the filing of this charge.

[X] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.

[X] The EEOC is terminating its processing of this charge.

[ ] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

[ ] **The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.**

[ ] **The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.**

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Jeanette M. Leino, District Director

FEB 10 1998
(Date Mailed)

Enclosure(s)

cc: TCI Media Svcs., attn: Personnel/HR (Seattle)
Kenneth D. Simoncini, Esq., Charging Party atty.
Personnel Administrator, TCI Boise.

ER 000285

0004457

EEOC Form 161-B (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

EXHIBIT 174 TRUEBLOOD 1-12-00

To: Becki Trueblood
3777 Newtown Rd.
Placerville, CA 95667

From:
EEOC - Seattle District Office
909 First Avenue, Suite 400
Seattle, WA 98104-1061

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
380980279	F. Frances Palmer	(206) 220-6865

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

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[ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

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If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Michael C. Fogt for
Jeanette M. Leino, District Director

FEB 10 1998
(Date Mailed)

Enclosure(s)

cc: TCI Media Svcs., attn: Personnel/HR
Kenneth D. Simoncini, Esq., Charging Party atty.
TCI Media Services BOISE (Personnel Admr)

T 000330

T 0126

31a
APPENDIX K

MAY-18-00 06:35 From:EEOC 909 1ST AVENUE #400 2062206911 T-423 P.04 Job-537

EEOC Form 161-B (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To:Patricia A. Cole
4878 Chinook Avenue
Boise, ID 83709

From:
EEOC - Seattle District Office
909 First Avenue, Suite 400
Seattle, WA 98104-1061

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (20 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
380980334	Frances Palmer, Supervisory Investigator	(206) 220-6865

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

[ ] More than 180 days have passed since the filing of this charge.

[x] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.

[x] The EEOC is terminating its processing of this charge.

[ ] The EEOC will continue to process this charge.

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[ ] The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

[ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Jeanette M. Leino, District Director

FEB [redacted]

(Date Mailed)

Enclosure(s)

cc:
TCI Media Services Boise and Seattle

Kenneth D. Simoncini, Attorney for Cole

EK 001654

000013

APPENDIX M

SIMONCINI & ASSOCIATES
Attorneys at Law
169-4 The Alameda
San Jose, California
95126-2219

Kenneth D. Simoncini, P.C.

Telephone
(408) 280-7711

Melanie D. Roberts
Marilynn J. Winters
Kerri A. Ridley
Michael A. Penfield
Corinne D. Barton
Charles M. Pollock

Facsimile
(408) 280-1330

Pamela A. Bauer, Paralegal

FAX COVER SHEET

DATE: December 31, 1997 COPY TO BE MAILED

TOTAL PAGES: 5 YES: X NO: ___
(Including Cover Page)

TO: Mr. John Townsend FAX NO: (206) 220-6911

FROM: Kenneth D. Simoncini, P.C.

RE: Cole v. TCI Media Services

MESSAGE: Please see the accompanying letter dated December 31, 1997. Thank you.

IMPORTANT NOTICE

This transmission is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED! If you have received this communication in error, please notify this office immediately by telephone and return the original message to the above address via the United States postal service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES, OR ARE DISCONNECTED, PLEASE CALL 408/280-7711 AS SOON AS POSSIBLE.

Telecopier Operator: Rachel

Simoncini & Associates
Attorneys at Law
169-4 The Alameda
San Jose, California
95126-2219

Kenneth D. Simoncini, P.C.

Telephone
(408) 280-7711

Melanie D. Roberts
Marilynn J. Winters
Kerri A. Ridley
Michael A. Penfield
Corinne D. Barton
Charles M. Pollock

Facsimile
(408) 280-1330

Pamela A. Bauer, Paralegal

December 31, 1997

John Townsend — via facsimile and U.S. mail
Equal Employment Opportunity Commission (206) 220-6911
Seattle District Office
909 First Avenue, Suite 400
Seattle, WA 98104

Re: EEOC Charge #380980253
Cole v. TCI Media Services

Dear Mr. Townsend:

We are in receipt of your correspondence of December 17, 1997, enclosing a proposed amended charge in the above matter.

We request that the charge be amended to reflect the facts and information contained within the enclosed Declaration of Patricia A. Cole in Support of Charge of Discrimination.

Once the charge has been amended to reflect the Declaration, this office intends to request a right to sue letter.

Of note, we request that the named employer be amended to name TCI Media Services, Great Northwest Region, a company that employs in excess of 500 employees. We also request that the charge also be filed with the Seattle Office for Civil Rights, and not the Idaho State Human Rights Commission. We also request the addition of a charge of discrimination based on age. Other amendments are contained within the Declaration.

* * * *

Simoncini & Associates

We would appreciate if this matter could be expedited, due to statutes of limitations considerations.

Please feel free to contact the undersigned if you have any questions.

Very truly yours,
/s/ Kenneth D. Simoncini
KENNETH D. SIMONCINI

KDS/CDB:
enclosure

DECLARATION OF PATRICIA A. COLE IN SUPPORT OF CHARGE OF DISCRIMINATION

I, PATRICIA COLE, declare as follows:

1. My name is Patricia A. Cole.

2. My address and telephone number are as follows: 4878 Chinook Avenue, Boise, ID 83709, (208) 362-5555.

3. I am a female.

4. My date of birth is: 1/23/54.

5. My Social Security Number is: 553-84-6334.

6. The company and individuals against whom this charge is made are: TCI Media Services, Great Northwest Region, located at 18 West Mercer, Suite 100, Seattle, Washington, 98119; Bruce Wetten, General Manager, at the TCI Media Services Boise office, located at 5475 Gage Street, Boise, Idaho, 83706; Edward Moore, former Team Leader at the TCI Media Services Boise office, current address unknown.

7. I am informed and believe that TCI Media Services employs in excess of 500 employees. TCI Media Services is a cable advertising business.

8. While employed at TCI Media Services, I held the position of Account Executive.

9. I was employed at TCI Media Services from July 8, 1996, to April 4, 1997.

10. I am making the following charges: I was harassed, subjected to a hostile work environment forced to quit, constructively terminated, and denied promotion, benefits and equal pay because of my gender/sex and age.

11. I request that the EEOC also file this charge with the Seattle Office for Civil Rights.

12. I base these charges on the fact that during my employment with TCI Media Services, I experienced a hostile work environment, and harassing and abusive conduct, including but not limited to: Moore would touch me in an inappropriate manner, rubbing my shoulders and chest; Moore would grab me from behind, physically restrain me, and mock intercourse; Wetten and Moore referred to the female sales people in the office as "My bitches" or "bitches"; Wetten responded to my complaints about

* * * *

Moore by saying that Moore was "harmless"; Moore would derogatorily comment on my age; I did not receive compensation comparable to similarly situated males; I was denied a rightful promotion to senior account executive; Lucrative sales accounts that rightfully belonged to me would be given to male account executives; regional management, including Penny Taylor and Karin Brasch, sanctioned such behavior and attitudes.

13. The last date of the above discrimination was April 4, 1997.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Executed on December 31, 1997, at Boise, Idaho.

/S/ Patricia A. Cole
PATRICIA A. COLE

APPENDIX N

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Seattle District Office

Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104
PH: (206) 220-6883
TDD: (206) 220-6882
FAX: (206) 220-6911

January 6, 1998

KENNETH D. SIMONCINI
Attorney at Law
1694 The Alameda
San José, California 95126-2219

Re: EEOC Charge #380980334
Cole -v- TCI Media Services

Dear Mr. Simoncini:

Pursuant to your fax transmission of December 31, 1997 in re the above matter, please find enclosed charge documents of a separate (as distinct from an amended) charge against TRI [*sic*]Media Services.

The new charge, briefly incorporating the allegations brought forth in your client's Declaration as received in the above-referenced fax transmission, was docketed, assigned the above number, and served on the respondent this date. In order to facilitate further processing of this charge, please have your client sign the enclosed charge forms and return them to this office in care of my attention, as soon as practicable.

When the signed charge forms are received in this office, the charge will be co-filed, per your request, with the Seattle Human Rights Commission, and processing of your Notice of Right to Sue request will commence.

Please refer to the above charge number in all future correspondence with this office, and take note that this number is separate and distinct from Charge #380980253, Cole -v- TCI Telecommunications. That number should be referenced in communications dealing exclusively with TCI Telecommunications, and both numbers should be used when referring to matters involving both respondent entities.

Paul [*sic*] D. Simoncini

January 6, 1998
Page 2 of 2

If you have any questions, please call me at 1-800-669-4000. I am usually in the office from 8:00-4:30 Tuesdays through Fridays. In the event that these charge forms are not returned, or I have not otherwise heard from you or your client within 30 days from the date of this letter, I will presume that you do not wish to pursue the matter further, and the case file will be destroyed without further action.

Cordially,

John Townsend
Seattle District Office
Charge Receipt/Technical Information Unit

APPENDIX O

SIMONCINI & ASSOCIATES
Attorneys at Law
1694 The Alameda
San Jose, California
95126-2219

RECEIVED

-9 A 9:08

Kenneth D. Simoncini, P.C.

Melanie D. Roberts
Marilynn J. Winters
Kerri A. Ridley
Corinne D. Barton
Charles M. Pollock

Pamela A. Bauer, Paralegal

Telephone
(408) 280-7711

Facsimile
(408) 280-1330

E-mail
kds@simoncini-law.com

February 6, 1998

VIA FACSIMILE AND U.S. MAIL
FAX: (206) 220-6911

F. Frances Palmer
U.S. Equal Employment Opportunity Commission
Seattle District Office
909 First Avenue, Suite 400
Seattle, WA 98104

Re: Cole v. TCI Media Services, EEOC Charge Numbers 380980253, 380980334;
Leal v. TCI Media Services, EEOC Charge Number 380980278;
Trueblood v. TCI Media Services, EEOC Charge Number 380980279

Dear Ms. Palmer:

On behalf of our clients, Patricia A. Cole, Cathy Leal, and Becki Trueblood, we request that the Equal Employment Opportunity Commission issue the rights to sue in the above-referenced matters.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

/s/ Kenneth D. Simoncini
Kenneth D. Simoncini

KDS/CDB:

APPENDIX P

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SEATTLE DISTRICT OFFICE

[SEAL]

909 First Avenue, Suite 400
Seattle, WA 98104-1061
PH: (206) 220-6880
TDD: (206) 220-6882
FAX: (206) 220-6911

"ARE YOU IN THE RIGHT PLACE?"
Jurisdictional information for Charging Parties

This information is being given to you to help you decide whether or not your employment problem can be handled by the United States Equal Employment Opportunity Commission (EEOC). If you have difficulty understanding these instructions or need special assistance, ask to speak to one of the Intake Officers.

The EEOC enforces the following laws prohibiting employment discrimination:

Title VII of the Civil Rights Act of 1964, as amended (TITLE VII)

The Age Discrimination in Employment Act of 1967, as amended (ADEA)

Title I of The Americans with Disabilities Act of 1990, as amended (ADA)

The Equal Pay Act of 1963 (EPA)

Sections 501 and 505, of the Rehabilitation Act of 1973, as amended

EEOC receives and investigates employment discrimination charges against private employers (with 15 or more employees under Title VII and ADA, 20 or more employees under the ADEA) state and local governments, educational institutions, employment agencies, and labor organizations (with 25 or more members under the ADEA). If the employment discrimination involves a federal government agency, STOP and ask to speak to an Intake Officer.

Generally, a charge must be filed within *300 days* of the date of the date when the alleged act of discrimination occurred.

Sometimes employment practices are unfair, but not illegal. We can only take charges of *illegal* discrimination. This means that unfair treatment you claim to have received must have happened because of one or more of the reasons below:

Your RACE

Your RELIGIOUS BELIEFS

Your NATIONAL ORIGIN

Your COLOR

Your AGE (if you are age 40 or over)

Your DISABILITY

Your SEX

Your PREGNANCY

RETALIATION for the following:

Because you opposed an act violating one of the laws enforced by the EEOC;

Because you participated in any way in an investigation or proceeding conducted by the EEOC; or

Because you associated with someone protected by one of the laws enforced by the EEOC.

UNFAIR TREATMENT THAT IS *NOT* DUE TO ONE, OR MORE OF THE ABOVE REASONS IS *NOT* HANDLED BY THE EEOC.

If you believe that the action taken against you was based on one or more of the above reasons, please be prepared to explain to the Intake Officer how you were discriminated against and who was treated differently than you.

NOTE: All charges received by the EEOC are automatically co-filed with one of the local Fair Employment Practice Agencies listed below. Our work-sharing agreement provides for charges to be investigated by one of the agencies, not both. If you have already filed a charge it may not be necessary for you to also file with the EEOC. STOP and ask to speak to an Intake Officer.

Alaska State Commission for Human Rights
Idaho State Human Rights Commission
Anchorage Equal Rights Commission
Seattle Office for Civil Rights
Oregon Bureau of Labor & Industries,
Civil Rights Division
Tacoma Human Rights Department
Washington State Human Rights Commission

ER001609

EEOC/SEDO/CRTTU/Imf/Jurisdiction
April 1997